

15 to 22 have been added to further bring out the particular embodiments of the subject matter defined in Claim 2 corresponding to the embodiments defined in previous Claims 3 to 8, 10 and 11. Additionally, applicants have added new Claims 12 to 14 to further bring out some of the procedural measures which were taken in accordance with Examples 1 to 3²⁾ of the application, as well as the nature of the anhydrous crystals which were obtained according to those examples³⁾. No new matter has been added.

The Examiner rejected Claims 1, 10 and 11 under 35 U.S.C. §102(b) as being anticipated by the teaching of *Spires* (US 4,394,377). It is respectfully requested that the respective rejection be withdrawn in light of applicants' amendment which introduces the requirements of Claim 3 into Claim 1 and, by way of reference, into Claims 10 and 11⁴⁾. Favorable action is solicited.

The Examiner rejected Claims 3 to 9 (now Claims 1 and 4 to 8) under 35 U.S.C. §103(a) as being unpatentable in light of the teaching of *Spires* (ibid.) when taken in view of the disclosure of *Klein et al.* (US 2,870,198). Favorable reconsideration of the Examiner's position is respectfully solicited in light of the following remarks.

Applicants' herewith submit a copy of *Gailliot et al.* (FR 1,242,805) as well as an English language abstract thereof. *Gailliot et al.* describe a crystalline choline ascorbate which has a melting point of from 130 to 132°C and which corresponds to a crystalline choline ascorbate described earlier by L. Di Bella⁵⁾. In contrast thereto, the crystalline choline ascorbate which meets the diffraction criteria set forth in applicants' Claims 1 and 6 has a melting point of from 123.5 to 124.4°C and of 124°C, as illustrated in applicants' examples. In light of the technical background knowledge illustrated by the disclosure of *Gailliot et al.*, applicants' choline ascorbate crystals are, therefore, a new crystal form of choline as-

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- 2) Cf. page 4, indicated line 23, to page 5, indicated line 20, in particular page 4, indicated lines 25 to 28, page 4, indicated line 45, to page 5, indicated line 1, and page 5, indicated lines 11 to 15, of the application.
 - 3) Cf. page 4, indicated line 34, and page 5, indicated lines 7 and 20, of the application.
 - 4) If an independent claim is non-obvious under 35 U.S.C. §103, then any claim depending therefrom is non-obvious (*In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (CAFC 1988)). Anticipation is the ultimate or epitome of obviousness (*In re Grose*, 592 F.2d 1161, 201 USPQ 57 (CCPA 1979)).
 - 5) Boll. soc. ital. biol. sper. 23, 1282 (1947) mentioned in the second paragraph of FR 1,242,805, and mentioned in the English language abstract with reference to Chemical Abstracts 42, 7712g.

corbate. Neither the teaching of *Spires* nor the disclosure of *Klein et al.* suggest or imply the existence of a second crystal form of choline ascorbate, or a manner in which the second crystal form of choline ascorbate could be produced. Accordingly, the teaching of *Spires* when combined with the disclosure of *Klein et al.* cannot be considered to render applicants' invention as defined in current Claim 1 and further specified in current Claims 4 to 8 prima facie obvious within the meaning of Section 103(a). Withdrawal of the Examiner's respective rejection is therefore respectfully solicited.

Applicants' new Claims 12 and 13 depend upon Claim 6 and the foregoing therefore equally applies where the subject matter of Claims 12 and 13 is concerned. Moreover, new Claims 12 and 13 require that ascorbic acid be reacted with triethylamine and ethylene oxide by adding ethylene oxide to a mixture comprising the ascorbic acid and the triethylamine. In contrast thereto, the procedure which is employed by *Klein et al.* comprises first reacting triethylamine with ethylene oxide to prepare a choline solution, and then reacting the choline solution with an acid. The disclosure of *Klein et al.* fails to teach or suggest those measures and a combination of the teaching of *Spires* and the disclosure of *Klein et al.*, therefore, fails to teach or suggest all of the features which characterize applicants' process and the three basic criteria to establish obviousness within the meaning of Section 103(a)⁶⁾ are not met where these new claims are concerned. New Claims 12 and 13 are therefore also deemed to be allowable over the prior art.

The Examiner did not include Claim 2 in the rejections. Accordingly, Claim 2 which is herewith presented in independent form as well as new Claims 13 to 20 which incorporate the limitations of Claim 2 by reference should be in condition for allowance. The same should apply to new Claim 14 since the requirement for anhydrous crystals in Claim 14 corresponds to the requirement of Claim 2 that the crystals be free from water of crystallization. Favorable action is respectfully solicited.

REQUEST FOR EXTENSION OF TIME:

It is respectfully requested that a two month extension of time

6) Cf. *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438, 1442 (CAFC 1991) and MPEP §2143.

be granted in this case. The respective \$450.00 fee is paid by credit card (Form PTO-2038 enclosed).

Please charge any shortage in fees due in connection with the filing of this paper, including Extension of Time fees, to Deposit Account No. 14.1437. Please credit any excess fees to such deposit account.

Respectfully submitted,
NOVAK DRUCE DELUCA & QUIGG



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Encl.: CLAIM AMENDMENTS (Appendix I)

Gailliot et al. (FR 1,242,805) and English language Abstract thereof

JDV/BAS